

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CR-00-543 BB

JAVIER ENRIQUE BARRIENTOS-SOLIS,

Defendant.

**MEMORANDUM OPINION AND ORDER**

This matter is before the Court on Defendant's motion to modify term of imprisonment under 18 U.S.C. § 3582(c)(2) (Doc. 71) filed August 22, 2005. Defendant claims that his sentence should be reduced under the Supreme Court's decision in *United States v. Booker*, --- U.S. ---, 125 S. Ct. 738 (2005). The motion will be denied.

Defendant's allegations do not support a claim for reduction of sentence. Under § 3582(c)(2), after a defendant is convicted, if the Sentencing Commission retroactively lowers the applicable sentencing range, U.S.S.G. Ch. 5 Part A, the defendant may move for reduction of sentence in accordance with the factors in 18 U.S.C. §3553(a). *See* § 3582(c)(2); U.S.S.G. § 1B1.10. Here, Defendant contends that the *Booker* decision effectively lowered his sentencing range. As stated recently by the Court of Appeals for the Tenth Circuit,

We have explained that “ ‘[a] district court is authorized to modify a [d]efendant's sentence only in specified instances where Congress has expressly granted the court jurisdiction to do so.’ ” Thus, even if *Booker* could be read to be an implicit lowering of [Defendant]'s sentencing range, § 3582(c)(2) only expressly allows a reduction where the Sentencing Commission, not the Supreme Court, has lowered the range. . . . *Booker* does not provide a basis for a sentence reduction under § 3582(c).

*United States v. Price*, 438 F.3d 1005, 1007 (10th Cir. 2006) (quoting *United States v. Green*, 405 F.3d 1180, 1184 (10th Cir. 2005). The relief that Defendant seeks is squarely precluded by the ruling in *Price*, and the motion will be denied.

IT IS THEREFORE ORDERED that Defendant's motion to modify term of imprisonment under 18 U.S.C. § 3582(c)(2) (Doc. 71) filed August 22, 2005, is DENIED;

IT IS FURTHER ORDERED that, in accordance with *United States v. Espinosa-Talamantes*, 319 F.3d 1245, 1246 (10th Cir. 2003), Defendant is hereby NOTIFIED that a notice of appeal from an order denying a motion under 18 U.S.C. § 3582(c) must be filed within ten days after entry of the order.

  
UNITED STATES DISTRICT JUDGE